

## 1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

02/03/21 PM 2:00

## 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, : CRIMINAL ACTION CR-1-02-054  
5 :  
6 Plaintiff, : Cincinnati, Ohio  
7 : Monday, February 3, 2003  
8 -vs- :  
9 :  
10 WALTER M. PUGH, JR., : Sentencing  
11 :  
12 Defendant. : 2:00 p.m.  
13 - - -

14 TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE  
16 - - -

17 For the Plaintiff: Wende Cross, Esq.  
18 Amul Thapar, Esq.  
19 Asst. U.S. Attorney  
20 Atrium II, Suite 400  
21 221 East Fourth Street  
22 Cincinnati, Ohio 45202

23 For the Defendant: Pro Se  
24 (Walter Pugh, Jr.) J. Robert Andrews, Esq.  
25 (Legal advisor) Schuh & Goldberg  
26 2662 Madison Road  
27 Cincinnati, Ohio 45208

28 (Tyreese Pugh) Edward J. Felson, Esq.  
29 Felson & Felson  
30 CBLD Center, Suite 1650  
31 36 East Seventh Street  
32 Cincinnati, Ohio 45202.

33 Law Clerk: Mike Rich  
34 Courtroom Deputy: Steve Snyder  
35 Court Reporter: Betty Schwab

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## 1 PROCEEDINGS

2 THE COURTROOM DEPUTY: The first case is  
3 CR-1-02-54, defendant one, United States of America v.  
4 Walter Pugh, Jr. Will the parties please step forward?

5 THE COURT: Good afternoon to everyone.

6 MS. CROSS: Good afternoon, Your Honor.

7 MR. ANDREWS: Good afternoon.

8 THE COURT: Will counsel please enter their  
9 appearances for the record?

10 MS. CROSS: Wende Cross on behalf of the United  
11 States.

12 MR. ANDREWS: J. Robert Andrews on behalf of  
13 Walter Pugh, acting as his standby counsel and counsel.

14 THE COURT: All right. And are you Walter M.  
15 Pugh, Jr.?

16 THE DEFENDANT: Yes, I am Walter M. Pugh, Jr.

17 THE COURT: And are you representing yourself in  
18 this proceeding, Mr. Pugh, along with Mr. Andrews as your  
19 legal advisor?

20 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

21 THE COURT: On a former day, the defendant  
22 pleaded not guilty to count one, conspiracy to commit a  
23 bank robbery; count two, armed robbery; and count three,  
24 brandishing a firearm during a crime of violence. A jury  
25 trial commenced in this case on September 3, 2002, and on

1 September 10, 2002, the defendant was found guilty as  
2 charged on all counts in which he was named in the  
3 indictment. At that time, the matter was referred to the  
4 United States Probation Department for a presentence  
5 investigation and report.

6 The Court has received the presentence report  
7 prepared December 13, 2002, and the memo from the Probation  
8 Office dated October 2, 2002.

9 Ms. Cross, have you received a copy of those  
10 documents?

11 MS. CROSS: I have, Your Honor.

12 THE COURT: And, Mr. Andrews, have you received a  
13 copy of those documents?

14 MR. ANDREWS: Yes, I have, Your Honor.

15 THE COURT: And, Mr. Pugh, have you received a  
16 copy of those documents?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: And have you had an opportunity to  
19 discuss them with Mr. Andrews?

20 THE DEFENDANT: No, I haven't.

21 THE COURT: Do you want such an opportunity?

22 (Mr. Andrews and the defendant converse off the  
23 record.)

24 THE DEFENDANT: We can move on.

25 THE COURT: I'm sorry?

THE DEFENDANT: We can move on.

2 THE COURT: The defendant has put forth  
3 objections to the presentence report in this case  
4 concerning paragraphs 46 and 47, and I'll ask you to  
5 address those objections in a few moments. First, however,  
6 I would like to address the factual findings for  
7 sentencing.

12 Let me ask the parties, are any of the facts,  
13 other than those in the objections that are reported in the  
14 presentence report, disputed by the defendant or the  
15 government?

16 Ms. Cross?

17 MS. CROSS: No objections on behalf of the  
18 government, Your Honor.

19 MR. ANDREWS: There is one additional, Your  
20 Honor.

21 THE COURT: No. This is not objections. What  
22 I'm asking about right now --

23 MS. CROSS: We don't object to any of the facts.

24 THE COURT: Facts in the presentence report.

25 MR. ANDREWS: The facts are substantially

1 correct.

2 THE COURT: All right. Do you have any  
3 additional sentencing facts you wish to present, Ms. Cross?

4 MS. CROSS: No, Your Honor.

5 THE COURT: Okay. Mr. Pugh and Mr. Andrews, any  
6 additional sentencing facts?

7 MR. ANDREWS: No, Your Honor.

8 THE COURT: All right. Then there being no  
9 objections, other than those previously mentioned in the  
10 factual statements contained in the presentence report, the  
11 Court adopts those statements as its finding of fact.

12 The defendant has been found guilty of all counts  
13 in which he was named in the indictment. Accordingly, the  
14 defendant is adjudged guilty in case number CR-1-02-54,  
15 conspiracy to commit a bank robbery in count one, armed  
16 robbery in count two, and brandishing a firearm during a  
17 crime of violence in count three.

18 Pursuant to 18 United States Code Section 3553,  
19 the Court makes the following finding of relevant fact  
20 significant to the imposition of sentence. In count one,  
21 the defendant is guilty of violating 18 United States Code  
22 Section 371, which is a class B felony and subjects the  
23 defendant to a maximum of 25 years imprisonment, a \$250,000  
24 fine, a period of supervised release of five years, and a  
25 \$100 special assessment. In count two, the defendant is

1 guilty of violating 18 United States Code Section 2113(a)  
2 and (d) and 18 USC Section 2, which is also a Class B  
3 felony and subjects the defendant to a maximum of 25 years  
4 imprisonment, a \$250,000 fine, a period of supervised  
5 release of five years, and a \$100 special assessment. In  
6 count three, the defendant is guilty of violating 18 United  
7 States Code Section 924(c)(1)(A)(i), which is a Class A  
8 felony and subjects the defendant to a mandatory minimum  
9 seven years imprisonment to the sentence that is already  
10 imposed on the count two offense, a period of supervised  
11 release of five years, and a \$100 special assessment.

12                   However, the Sentencing Guidelines Manual  
13 controls the determination of sentence in this case.

14                   Let me next deal with the issue of objections.  
15 The final presentence report indicates that the defendant  
16 has objected to the two-level enhancement for role in the  
17 offense in paragraphs 46 and 47.

18                   Are there any objections to the presentence  
19 report that have not been previously raised?

20                   Ms. Cross?

21                   MS. CROSS: No, Your Honor.

22                   THE COURT: Mr. Andrews and Mr. Pugh?

23                   MR. ANDREWS: Yes, there is, Your Honor. My  
24 client has drawn to my attention that in paragraph 70 --

25                   THE COURT: Hang on one second. Let me just find

1 it in the presentence report. Okay.

2 MR. ANDREWS: He was assessed three criminal  
3 history points on a felony conviction that took place in  
4 1984, which is certainly outside the period of time for  
5 which criminal history points are to be assessed. Now, I  
6 know there is further a request for an upward departure on  
7 the criminal history points aside from this. But from,  
8 quite honestly, from discussing it with Mr. Pugh, I'm not  
9 real sure what would bring these three points back into the  
10 report. It is clearly beyond the periods of time indicated  
11 in the guidelines.

12 THE COURT: Ms. Cross, do you want to respond to  
13 that?

14 MS. CROSS: Your Honor, I am by no means an  
15 expert on the guidelines. I would defer to Lisa Egner on  
16 that regard.

17 THE COURT: All right.

18 MS. EGNER: Your Honor, criminal history points  
19 are assessed if a defendant serves any period of time in  
20 the last 15 years incarcerated on a sentence imposed under  
21 that guideline, and, according to the Department of  
22 Corrections, Mr. Pugh was not released until September 20,  
23 1999. And so he served incarceration, even though the  
24 sentence was imposed 20 years ago or 19 -- my math is not  
25 good -- 19 years ago, he did serve that. The actual

1 imposition of sentence is outside, but the service of the  
2 sentence is not. So that's what controls here.

3 THE COURT: Thank you, Ms. Egner.

4 MS. EGNER: You're welcome.

5 MS. CROSS: Your Honor, what Ms. Egner stated is  
6 supported by the Sentencing Guidelines Section 4A1.1 and  
7 particularly the Application Note 1.

8 THE COURT: Anything further on that issue?

9 MR. ANDREWS: Nothing further. My client had  
10 asked me to bring it to the Court's attention, and I have  
11 in fact done that.

12 THE COURT: All right. What about the objections  
13 in paragraphs 46 and 47; do you wish to be heard on those  
14 at all?

15 MR. ANDREWS: Your Honor, as to 46, my client has  
16 not only been given a two-point enhancement as an organizer  
17 in this, a leader, manager, supervisor in this offense, but  
18 has further in the later section been asked -- the Court  
19 has been asked to impose an upward departure essentially on  
20 the same information.

21 As the Court is well aware, because there was a  
22 lengthy trial in this matter, my client and his son are  
23 alleged to have robbed a bank together. The Court has seen  
24 the pictures of the individuals in the bank. Both held  
25 guns. Both forced people to the ground or to do things.

1 Both participated fully and completely together in this  
2 matter. And to find the one is somehow more culpable than  
3 the other, I think goes beyond the facts as they were  
4 presented here in court. There are things that my client  
5 did or is alleged to have done that obviously facilitated  
6 this offense, but, at the same time, the co-defendant  
7 committed similar acts and was engaged in similar  
8 activities.

9 A question of procuring, one may have procured  
10 the car allegedly for this robbery, or the guns, while the  
11 other may have procured a place to stay, a means of getting  
12 to the place to stay. Essentially, their roles are  
13 co-equal roles, not that of leader and follower.

14 That being the case, I think it's improper under  
15 46 to make one a manager over the other and assess a  
16 two-point enhancement. And, again, I would incorporate the  
17 same argument as to the upward departure.

18 And as to, you know, one of the things to note is  
19 possession of the money. The money, as we know and as I  
20 pointed out in closing argument, is something of great  
21 dispute, because nobody knows where the money is. And to  
22 say my client had something to do with that is pure  
23 speculation at this point. And that's why we object to 46.

24 The other paragraph we objected to was --

25 THE COURT: It was 47.

1                   MR. ANDREWS: 47, which is essentially the same  
2 information.

3                   THE COURT: Ms. Cross, do you wish to respond?

4                   MS. CROSS: Yes, Your Honor. Your Honor, the  
5 United States fully supports the two-level increase  
6 recommended by the United States Probation Office. We  
7 believe that it is definitely warranted pursuant to Section  
8 3B1.1(c) of the guidelines. Under that Guideline  
9 provision, Your Honor, and in the application note,  
10 particularly number 4, it states that some of the factors  
11 that the Court should look at when determining whether or  
12 not to increase the base offense level for role are things  
13 like the exercise of decision making, the nature of  
14 participation in the commission of the offense, the nature  
15 and scope of the illegal activity and degree of control and  
16 authority that was exercised.

17                  Your Honor, I remind the Court of the testimony  
18 at trial that it was Walter Pugh that borrowed Betsy Pugh's  
19 car that was the getaway car that transported both these  
20 defendants to and from the scene. Stephanie Luster  
21 testified that it was Walter's idea that they go to Atlanta  
22 and called all the shots during their travel, what hotel  
23 they stayed in, when they left, when they got up. It was  
24 also the testimony that Walter had possession of the money  
25 from the robbery and maintained control over it most of the

1 time. It was in his room, on his bed. And, if you recall,  
2 Your Honor, Shanell Holston, the defendant's girlfriend,  
3 testified -- she identified the gun that was found by  
4 Tyreese Pugh. She identified it as being Walter Pugh's  
5 gun, because she had seen it at the house where they lived  
6 prior to the robbery.

7 If you recall the photo during the trial, Your  
8 Honor, of the two defendants in the bank, it was Walter  
9 Pugh that jumped over the counter and obtained the money  
10 from Jenny Tettenhorst, and it was Walter that made the  
11 verbal threats. Although they both did threatening  
12 actions, it was Walter that made the verbal threats that  
13 allowed them to complete this crime.

14 Regarding the degree of control and authority  
15 that was exercised, it was Shanell Holston that said that  
16 it was Walter who was controlling and dominated everybody  
17 around him, including his sons. And there were only two  
18 individuals involved in this offense, Your Honor, father  
19 and son. And you can look at them, Your Honor, and it is  
20 clear that it is Walter who is the one who appears to be  
21 more likely to exercise control over Tyreese than Tyreese  
22 exercising control over his father.

23 Additionally, Your Honor, I would just state for  
24 the record that, when considering a plea offer by the  
25 United States before trial, Tyreese wanted to consult with

1 Walter first.

2 MR. ANDREWS: Your Honor, with all due respect,  
3 we will object to discussion of plea matters at this time  
4 or at any time.

5 THE COURT: Well, anything is permissible in  
6 sentencing.

7 MR. ANDREWS: Just making my objection.

8 MS. CROSS: It was Walter who exercised control  
9 during the offense. It was Walter who exercised control  
10 after the offense. And even when considering a plea offer,  
11 Tyreese wanted to consult his father first. So I think  
12 those facts play -- warrant the enhanced role in this case.

13 THE COURT: Thank you, Ms. Cross.

14 Anything further?

15 MR. ANDREWS: I just note, if we're going to come  
16 to that, you know, in talking about plea discussions, et  
17 cetera, it's my understanding that, since the time of the  
18 trial, Tyreese has independently tried to work out a deal  
19 to give the money back without my client being involved.  
20 So, if we're going to look at things subsequent to all of  
21 this, that is a subsequent and independent act of a person  
22 who obviously has some indication of where the money is, et  
23 cetera, which actively chips away at this theory that  
24 somehow Walter is in more control than is Tyreese.

25 The other thing is terms like "seduced" and "led

1       astray" have been used to characterize what my client has  
2       done with his son, which ignores something that the Court  
3       can see in looking at Tyreese's own presentence  
4       investigation report, which is he has a criminal history  
5       that has nothing to do with my client. He was not a babe  
6       in the woods. He was a man who had just done several years  
7       in the state pen for drug trafficking. He engaged in an  
8       activity, allegedly with my client, which you have heard  
9       all the evidence on. They are independent, adult  
10      individuals who played differing roles, but played equal  
11      roles in the robbery of this bank and the events that took  
12      place thereafter.

13           I just find that increasing his points by two or  
14      to justify an upward departure based on the fact that we  
15      have two people with criminal records that are lengthy -- I  
16      would even note with the addition of the contested and  
17      upward departed criminal history points, my client still  
18      scores lower than his son on criminal history points, and,  
19      to put it bluntly, I think you have two men, if you are  
20      going to accept the facts as they were found by the jury,  
21      et cetera, who are co-equally involved and co-equally  
22      responsible for every act that took place involving the  
23      robbery of this bank and the fleeing thereafter.

24           Let me remind the Court that, while the young  
25      lady did testify that the shotgun had at one time been

1 Walter's, that shotgun was found where? In between  
2 Tyreese's legs in bed with the young lady, and he rolled  
3 over on top of it directly in front of the team of officers  
4 who came in to make his arrest.

5 Very simply, everything that you look at as you  
6 go through this shows a co-equal involvement of both  
7 individuals, and just because one happens to be the father  
8 and one happens to be the son does not in any way indicate  
9 one exerts control over the other.

10 THE COURT: Anything further, Ms. Cross?

11 MS. CROSS: No, Your Honor.

12 THE COURT: All right. Then the Court will now  
13 address the objection. The defendant has objected to the  
14 two-level enhancement for role in the offense in paragraphs  
15 46 and 47 and does not believe he functioned as a leader or  
16 organizer in the armed bank robbery. It is the defendant's  
17 position that he and his son are equally culpable and they  
18 have the same level of involvement and responsibility and  
19 neither exercised control or influence over the other one.

20 Walter Pugh and his son committed a bank robbery  
21 in which both men were armed. The defendant Walter Pugh  
22 borrowed his sister's car, which he used in the robbery for  
23 transportation purposes. In addition, after fleeing the  
24 area, trial testimony reflected that Walter Pugh had  
25 possession of the money from the robbery and maintained

1 complete control over it. It was observed by a witness to  
2 be in the hotel room and was spent only at his direction or  
3 with his approval.

4 For those reasons and the reasons stated by  
5 Ms. Cross, the Court is going to overrule the objection.

6 Let me go over with you the applicable  
7 guidelines. Walter Pugh was found guilty following a trial  
8 by jury of the following: Count one, conspiracy to commit  
9 bank robbery, which is a Class B felony in violation of  
10 Title 18 United States Code Section 371; count two, armed  
11 robbery, a Class A felony in violation of 18 United States  
12 Code Sections 2113(a) and (d) and Section 2; and count  
13 three, brandishing a firearm during a crime of violence,  
14 which is a Class A felony in violation of Title 18 United  
15 States Code Section 924(c)(1)(A)(i).

16 The instant offenses occurred on April 24, 2002.  
17 As a result, the 2002 edition of the Guidelines Manual was  
18 used in calculating the offense level. Counts one and two  
19 are grouped together under Sentencing Guideline Section  
20 3D1.2(b) because they represent a single course of conduct  
21 with the same criminal objective and represent one  
22 composite harm to the same victim. Count two is the  
23 substantive offense which was the sole object of the  
24 conspiracy charged in count one. Count three, a violation  
25 of Title 18 United States Code Sections 924(c)(1)(A)(i),

1 which specifies a term of imprisonment to be imposed and  
2 requires such sentence to run consecutively to any other  
3 term of imprisonment, is not grouped under any  
4 circumstances. The sentence to be imposed on the count  
5 three offense is determined by statute and imposed  
6 independently.

7 Let me go with the first group, which is counts  
8 one and two. The guideline for 18 United States Code  
9 Section 2113 involving robbery is found at Sentencing  
10 Guideline Section 2B3.1. Substance (a) indicates the base  
11 offense level is 20. Sentencing Guideline Section  
12 2B1.3(b)(1) provides for a two-level increase if the  
13 property of the financial institution was taken. Pursuant  
14 to Sentencing Guideline Section 2B3.1(B)(2)(B), the offense  
15 level is increased by six if a firearm, although not  
16 discharged, was otherwise used. However, this specific  
17 offense characteristic is not applicable to avoid the  
18 potential for double counting, because sentencing under  
19 this guideline is being imposed in conjunction with the  
20 sentencing for the underlying offense. According to  
21 Sentencing Guideline Section 2B3.1(b)(4)(B), two levels are  
22 added if anyone was physically restrained to facilitate the  
23 commission of the offense or escaped from the scene.

24 Would you like a cough drop?

25 MR. ANDREWS: No. I'm fine, Your Honor.

1                   THE COURT: Would you like some water?

2                   MR. ANDREWS: A glass of water in a moment might  
3 be good.

4                   THE COURT: Sentencing Guideline Section  
5 2B3.1(b)(7)(C) provides incremental increases to the  
6 offense level based on the value of the property taken,  
7 damaged or destroyed over \$10,000. Since the robbery  
8 involved \$153,189, the offense level is increased by two  
9 according to Subsection C. Although the Sentencing  
10 Guideline Section 3A1.3 states the offense level is  
11 increased by two if the victim was physically restrained,  
12 no adjustment applies since this factor is addressed in the  
13 specific offense characteristic, Sentencing Guidelines  
14 Section 2B3.1 at Subsection (d)(4)(B).

15                   The defendant was an organizer or leader of the  
16 offense, and, pursuant to the sentencing guidelines, the  
17 offense level is increased by two.

18                   No other adjustments apply, making the adjusted  
19 offense level or subtotal 28.

20                   The defendant has not accepted responsibility for  
21 his criminal behavior, and, after being convicted by a  
22 jury, maintains his innocence with respect to the instant  
23 offenses. As a result, no adjustment pursuant to  
24 Sentencing Guidelines Section 3E1.1 applies to this case.

25                   The defendant has several -- I'm sorry. The

1 defendant has 7 criminal history points which establish a  
2 criminal history category of IV. Based on a total combined  
3 offense level of 28 and a criminal history category of IV,  
4 the guideline imprisonment range is 110 to 137 months.  
5 Pursuant to Sentencing Guideline Section 2K2.4(a)(2), the  
6 guideline sentence for a violation of 18 USC Section  
7 924(c), which was count three, the firearm, is the minimum  
8 term of imprisonment required by statute, which in this  
9 case is 7 years or 84 months. The authorized term of  
10 supervised release for counts one and two --

11 MR. ANDREWS: I will get a cough drop. Sorry,  
12 Your Honor. I apologize to the Court.

13 THE COURT: That's all right. Do you need  
14 tissues?

15 MR. ANDREWS: No. I'm fine.

16 THE COURT: The authorized term of supervised  
17 release for counts one and two, as well as count three, is  
18 at least three but not more than five years, because the  
19 offenses are Class A or B felonies.

20 Pursuant to 18 United States Code Section  
21 3561(a)(1), the defendant is not eligible for a term of  
22 probation because counts one and two are Class B felonies.  
23 In addition, the count three offense, which is a Class A  
24 felony, requires a consecutive sentence of imprisonment.

25 According to Sentencing Guidelines Section

1 2K2.4(b)(1), where there is a federal conviction underlying  
2 offense, a consolidated fine guideline is determined by the  
3 offense level which would have applied to the underlying  
4 offense absent a conviction under 18 USC Section 924(c).  
5 In Group One, which encompasses counts one and two, the  
6 adjusted offense level is 28. Had there not been a  
7 conviction under 18 United States Code Section 92(c), the  
8 offense level would have been 34, which includes a  
9 six-level enhancement for otherwise using a firearm. As a  
10 result, the fine range for an offender with a total  
11 combined offense level of 34 is \$17,500 to \$175,000.

12 The First National Bank of Southwest Ohio  
13 suffered a loss of \$153,189. Restitution payment should be  
14 forwarded to the main branch of the bank, and the addressee  
15 will be given in the judgment and conviction order.

16 A special assessment in the amount of \$100 is  
17 mandatory for each felony conviction. Since Mr. Pugh was  
18 convicted of three felonies, a special assessment in the  
19 amount of \$300 is owed and due immediately.

20 Do the parties have any questions about the  
21 statutory or guideline provisions applicable to the  
22 imposition of punishment in this case?

23 Ms. Cross?

24 MS. CROSS: No, Your Honor.

25 MR. ANDREWS: No.

1                   THE COURT: Okay. Then we will now proceed to  
2 the sentencing. And at this time the Court will entertain  
3 anything the parties wish to say in mitigation or  
4 aggravation of sentence.

5                   Mr. Andrews or Mr. Pugh or both?

6                   MR. ANDREWS: Do you want to speak?

7                   Your Honor, my client was born in 1957. One of  
8 the reasons I bring this up is my client is not a young  
9 man. Imposition of the sentences that are being indicated  
10 by way of the presentence investigation with the upward  
11 departure would make it so that my client would be far in  
12 excess of the age to collect Social Security when and if he  
13 would ever be released from federal prison.

14                  He obviously is the father of Tyreese Pugh. That  
15 does not, in and of itself, leave the Court to an  
16 inescapable conclusion that he is the one who is  
17 responsible for this offense. As I indicated earlier,  
18 terms like "seduced" and et cetera have been used to  
19 portray how he related to Tyreese.

20                  As I have indicated, Tyreese has a substantial  
21 criminal record all on his own that had nothing to do with  
22 my client because, at the time he accomplished his prior  
23 criminal acts, my client was sitting in a state penal  
24 institution. There is nothing to indicate that, prior to  
25 this occasion or other than the subsequent events that have

1 been testified to in the original trial, that my client  
2 ever had any control over Tyreese Pugh of any type.

3                   My client came from a tough background in  
4 Hamilton, Ohio. His parents are in fact deceased. He has  
5 spent a great deal of his adult life incarcerated, as the  
6 Court is well aware.

7                   Based on all of this, I will ask the Court not to  
8 consider the upward departures. The initial sentences  
9 indicated, without the upward departures, more than fully  
10 satisfy the requirements of time to be imposed on a  
11 sentence of this type. Very simply, to impose more than  
12 that will lead to a situation where my client very simply  
13 is having a death sentence imposed on him today, in that he  
14 will not ever return to outside life.

15                  Based on that, Your Honor, I would ask the Court  
16 to not engage in the upward departures, to leave the  
17 sentence as it would have been imposed without those upward  
18 departures, and allow my client to go forth and do the  
19 time.

20                  THE COURT: Mr. Pugh, anything you wish to say?

21                  THE DEFENDANT: No.

22                  THE COURT: Ms. Cross, anything you wish to say?

23                  MS. CROSS: Yes, Your Honor. Not only does  
24 the United States -- not only do we support an upward  
25 departure, the United States strongly urges the Court

1 to depart upward from a criminal history category of  
2 IV to a V, because his criminal history category IV  
3 right now significantly under represents the  
4 seriousness of his criminal history or the likelihood  
5 that he will commit further crimes.

6 Your Honor, first of all, but for his February,  
7 2000, drug conviction not being countable as a felony  
8 offense, Defendant would have been a career offender. And  
9 I submit to you that, despite the fact that he has escaped  
10 being a career offender under the technicalities of the  
11 guidelines, that this defendant is a career offender.

12 Additionally, because the United States did not  
13 charge a felon in possession count in violation of Title 18  
14 United States Code Section 922(g) and he wasn't convicted  
15 of that, the defendant would have been, if he were  
16 convicted of that offense, he would have been an armed  
17 career criminal.

18 I submit to you that, despite that, Your Honor,  
19 this man is an armed career criminal. He has two prior  
20 adult convictions involving weapons. Paragraph 69 of the  
21 presentence report outlines one of them, and paragraph 70  
22 of the presentence report outlines the other. He also has  
23 a juvenile conviction, adjudication involving a knife. And  
24 so he is an armed career criminal.

25 The likelihood of future criminal activity, this

1 defendant has been committing crimes since the age of 14,  
2 Your Honor. They have escalated in seriousness from  
3 receiving stolen property to aggravated burglary, from  
4 assault with a knife to involuntary manslaughter, from  
5 using a knife to using a gun, and from flying solo to  
6 convincing others to join him in his crimes.

7 I have no doubt in my mind, Your Honor, that had  
8 Jenny Tettenhorst, the victim teller in this case, said the  
9 wrong thing, looked the wrong way or made the wrong move,  
10 that this defendant would have killed her.

11 As I prepared today, Your Honor, I tried to think  
12 about what distinguishes these two men from one another.  
13 They look alike, both in person and on paper. If you look  
14 at their criminal history, they're very similar at the same  
15 ages. They both have sons. Tyreese has one son. Walter  
16 has three. So I tried to figure out what distinguishes  
17 those two men from each other. And I can't help but think  
18 that it's this. For Tyreese, Walter is his dad. For  
19 Walter, Tyreese is simply a co-defendant. To some degree,  
20 I believe that Tyreese made his decision to commit these  
21 offenses based on his heart. But what distinguishes Walter  
22 is that he's heartless. And he's certainly no role model  
23 for any decent human being in our society.

24 Your Honor, if a maximum sentence on an upward  
25 departure was ever warranted by this Court, this is the

1 case and this is the defendant. Thank you.

2 THE COURT: Thank you, Ms. Cross. Do you have a  
3 victim who wants to speak?

4 MS. CROSS: I do, Your Honor. Jenny Tettenhorst  
5 is here.

6 THE COURT: Good afternoon, Ms. Tettenhorst.

7 MS. TETTENHORST: Good afternoon.

8 THE COURT: Thank you for coming. We heard your  
9 name during the trial. We appreciate your being here.

10 MS. TETTENHORST: It's a pleasure being here. I  
11 was wondering if I can't face both of them.

12 THE COURT: Sure. What do you want to do? You  
13 want to face them?

14 MS. TETTENHORST: I was wanting to face them.

15 THE COURT: You want to come sit in the witness  
16 stand?

17 MS. TETTENHORST: Yes.

18 MR. FELSON: Should I bring my client up?

19 THE COURT: Can you see the other Mr. Pugh?

20 MS. TETTENHORST: I would like to have them both  
21 together.

22 THE COURT: Yes. That would be good, Mr. Felson.  
23 I assume this statement applies to the sentence of both  
24 anyway.

25 MS. TETTENHORST: Yes.

1                   THE COURT: Have a seat. Take your time.

2                   MS. TETTENHORST: I'm nervous. I brought  
3 something to read.

4                   THE COURT: All right.

5                   MS. TETTENHORST: It says: I am standing here --  
6 actually sitting -- before you to let you know how you have  
7 affected my life, even though I know you probably won't  
8 care. Ever since the robbery, I have been scared,  
9 constantly looking over my shoulder. I haven't been able  
10 to sleep very well or eat very well. I cry a lot.

11                  However, I just wanted to say I have forgiven  
12 both of you. I hope some day that you would allow the Lord  
13 into your life. I know that I can forgive you. If I can  
14 forgive you, he can. Without him, I know that as soon as  
15 you get out you will do probably exactly the same thing  
16 that has happened to me and to my co-workers, and I don't  
17 wish that experience on any other teller.

18                  You might not think that robbing a bank is a big  
19 deal. You need for once, however, to put yourself in  
20 another person's shoes and see how you would feel if you  
21 were in my position. How would you react to two people who  
22 you know nothing about waving guns all around?

23                  I wonder if you would have a place in your heart  
24 to forgive like I have today. I am only able to achieve  
25 this by the grace of God. I hope when you spend your days

1 in jail you have the opportunity to think about what I have  
2 said and change your evil ways.

3 And I just want to say I'm not a victim no more.  
4 I can live my life. And that's all.

5 THE COURT: Thank you very much.

6 MS. TETTENHORST: Thank you.

7 THE COURT: Is there anything further before the  
8 Court pronounces sentence?

9 Okay. It's the duty of the Court to sentence the  
10 defendant at this time. However, counsel will have a final  
11 chance to make legal objections before the sentence is  
12 actually imposed.

13 Pursuant to the Sentencing Reform Act of 1984,  
14 it's the judgment of the Court that the defendant be hereby  
15 committed to the custody of the Bureau of Prisons for a  
16 term of 137 months on counts one and two, such sentences to  
17 be served concurrently with each other. The defendant is  
18 hereby committed to the custody of the Bureau of Prisons  
19 for a term of 84 months on count three, such sentence to be  
20 served consecutively to the sentences imposed in counts  
21 one, two and three.

22 Following the sentence of imprisonment, the  
23 defendant is ordered to be placed on supervised release for  
24 a period of five years on counts one, two and three, such  
25 terms to be served concurrently. Upon release from

1 incarceration, the defendant is ordered to report in person  
2 to the probation office in the district in which he is  
3 released within 72 hours.

4 As a condition of supervised release, the  
5 defendant shall pay any unpaid balance of his monetary  
6 penalties. No interest shall accrue on any unpaid balance.  
7 The defendant shall not commit another federal, state or  
8 local crime and is prohibited from possessing a firearm or  
9 other dangerous device. The defendant shall not possess  
10 any illegal -- I think I've got it now, Mr. Andrews.

11 MR. ANDREWS: Would you like a mint?

12 THE COURT: No. The defendant -- the defendant  
13 shall not possess any illegal controlled substances. In  
14 addition, the defendant shall comply with the standard  
15 conditions of supervised release as adopted by the Court  
16 for the Southern District of Ohio.

17 As a special condition of supervised release, the  
18 defendant is ordered to refrain from any unlawful use of a  
19 controlled substance and submit to one drug test within 15  
20 days of release and at least two periodic drug tests  
21 thereafter.

22 The Court finds that the defendant is not capable  
23 of paying a fine. Pursuant to 18 U.S. Code Section 3663,  
24 the defendant is ordered to make restitution in the amount  
25 of \$153,189 jointly and severally with co-defendant Tyreese

1 Pugh to First National Bank of Southwestern Ohio. The  
2 restitution is due immediately. A special assessment of  
3 \$300 is owed and due immediately.

4 Let me say this in response to the arguments  
5 made. Ms. Cross, what you said was very tempting in that,  
6 if there ever were an upward departure, this was the case.  
7 The reason I did not upward depart was that I think it's  
8 just got to be extraordinary. I think that, although  
9 Walter Pugh's criminal history is not as great as his son,  
10 I think the only reason for that was that he was in jail  
11 for 19 years, but that's the way it falls.

12 I did go at the top of the offense level,  
13 because, Mr. Pugh, I agree that I think you ought to be  
14 away for a long time. I have personally seen a number of  
15 lives you have affected. You really leave ruin in your  
16 wake. You're like a boat with a huge wake. You've  
17 affected Tyreese's life, who was only three when you went  
18 to jail, or something like that. Your two nieces ended up  
19 being charged with crimes because of you. And your other  
20 son, or whatever Mr. McCullough is, was only convicted  
21 because of you. You've just wreaked havoc on so many  
22 people's lives, it's time to put an end to that.

23 Do you want me no make a recommendation as to  
24 what prison facility you be sent to, for instance closest  
25 to Cincinnati or Hamilton or whatever?

1                   THE DEFENDANT: No. I would like to go to  
2 California if it's possible.

3                   THE COURT: What --

4                   THE DEFENDANT: California, State of California.

5                   THE COURT: What -- closest to what city out  
6 there?

7                   THE DEFENDANT: It makes no difference.

8                   THE COURT: Okay. All right. Any facility in  
9 California?

10                  THE DEFENDANT: Yes, ma'am.

11                  THE COURT: Mr. Pugh and Mr. Andrews, do you have  
12 any objections as to why the sentence should not be imposed  
13 as stated?

14                  MR. ANDREWS: Other than those previously noted,  
15 no.

16                  THE COURT: Ms. Cross, any objections?

17                  MS. CROSS: No, Your Honor.

18                  THE COURT: The sentence is thus imposed as  
19 stated.

20                  Let me tell you about your rights on appeal.

21 Both parties are notified by this Court that you have a  
22 right to appeal this sentence, and, if you're indigent and  
23 cannot retain a lawyer, you may apply, and one will be  
24 appointed to represent you on your appeal.

25                  You are further advised that, in accordance with

1 the provisions of Rule 4(b) of the Rules of Appellate  
2 Procedure, you must file your notice of appeal with the  
3 clerk of the United States District Court within ten days  
4 of the filing of judgment. The Court does hereby advise  
5 you that, if you so request, the clerk of this Court will  
6 prepare and file immediately a notice of appeal on your  
7 behalf.

8 It's further ordered that the defendant shall  
9 notify the United States Attorney for the Southern District  
10 of Ohio within 30 days of any change in resident or mailing  
11 address until all fines and special assessments imposed by  
12 this judgment are fully paid.

13 If you request, Mr. Pugh, I will order the clerk  
14 of courts to file your notice of appeal immediately after  
15 the judgment is filed.

16 THE DEFENDANT: I would like for the clerk to  
17 file, and I would like to see my appeals attorney before I  
18 leave and go to California if necessary, Judge. I would  
19 like to speak with my appeal attorney.

20 MR. ANDREWS: Your Honor, I will ask, because of  
21 the nature of my representation in this case, that I not be  
22 appointed as appellate counsel.

23 THE COURT: That's fine. We will have someone  
24 appointed, and I'll order that he make contact with you  
25 before you're sent to a prison facility outside of the

1 state.

2 THE DEFENDANT: Thank you.

3 Is there anything further on this case before I  
4 remand Mr. Pugh to the custody of the United States  
5 Marshal?

6 MS. CROSS: No, Your Honor.

7 MR. ANDREWS: Nothing, Your Honor.

8 THE COURT: Thank you, Mr. Andrews.

9 MS. CROSS: Thank you, Your Honor.

10 THE COURT: Good luck to you, Mr. Pugh.

11 THE DEFENDANT: Thank you.

12 PROCEEDINGS CONCLUDED

13

14 C E R T I F I C A T E

15 I, Betty J. Schwab, the undersigned, do  
16 hereby certify that the foregoing is a correct  
17 transcript from the record of the proceedings in  
18 the above-entitled matter.

19

20

Betty J. Schwab  
BETTY J. SCHWAB, RPR  
Official Reporter

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